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PART – I

Notifications, Orders and Declarations by Haryana Government

STATE ELECTION COMMISSION, HARYANA
NIRVACHAN SADAN, PLOT NO. 2, SECTOR-17, PANCHKULA, HARYANA-134109

Order

The 10th February, 2021

No. SEC/3ME/2021/568.— The General Election of Municipal Committee, Mahendergarh was held on 22.05.2016 and the result of the election was declared on the same day.

2. Section 13E of the Haryana Municipal Act, 1973, provides that every candidate at an election shall, either himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent from the date of filing of nomination papers to the date of declaration of the result thereof, both dates inclusive. The account shall contain such particulars, as may be notified by the State Election Commission in this behalf. The total of the said expenditure shall not exceed such amount as may be notified by the State Election Commission from time to time.

3. Section 13D of the Haryana Municipal Act, 1973 read with Section 10 A of the Representation of People Act, 1951 (applicable at the time of election) further provides that if the Election Commission is satisfied that a person –

- (a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act, and
- (b) has no good reason or justification for the failure the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.

4. In pursuance of the above provisions, the State Election Commission, Haryana vide its notification No. SEC/3ME/2015/619, dated 03.06.2015 in exercise of powers vested under clause (i) Article 243 ZA of the Constitution of India, Sub-section 3 of Section 13E of the Haryana Municipal Act, 1973 had prescribed the limit of expenditure of Rs.75,000/- that may be incurred by the contesting candidate or his authorized agent in connection with election of Municipal Committee, Mahendergarh and account of election expenses shall be filed/lodged with the Deputy Commissioner or any other officer prescribed by the Commission within 30 days from the date of declaration of the result of election.

5. The State Election Commissioner, Haryana in exercise of powers contained under Section 3B of the Haryana Municipal Act, 1973 authorized Assistant State Election Commissioner, State Election Commission, Haryana vide order No. SEC/1ME/2020/1833, dated 12.11.2020 to decide the cases of disqualification of the candidates of the said municipality, who failed to lodge their account of election expenses.

6. As reported by the Deputy Commissioner, Mahendergarh the following two candidates had not deposited their election expenditure statements within the prescribed time limit :-

Sr. No.	Name of candidate	Ward No.
1	Sh. Surender Kumar	5
2	Smt. Reena Garg	14

7. The Commission had served a show cause notice vide its No. SEC/3ME/2017/495, dated 15.03.2017 upon them to explain within 15 days as to why they should not be disqualified on account of non submission of election expenditure account within the prescribed period. In response to show cause notice both the candidates submitted their reply dated Nil received in the Commission on 04.10.2018 after about one year and seven months stating therein that they have submitted their election expenditure register in Municipal Committee. They have further stated that it has come to their notice only after issuance of show notice whereas same was deposited by them in the municipality.

8. I had given them an opportunity by way of personal hearing on 20.11.2020 at 12.30 PM in the office of State Election Commission, Haryana, in the interest of natural justice. Sh. Harish Kumar Sharma, Clerk, working on daily wages, Municipal Committee, Mahendergarh was appeared during the hearing. The said official had submitted a copy of letter dated 18.11.2020 vide which the notice of personal hearing were delivered to the said candidates. Both the above said candidates had sent an emails dated 19.11.2020 stating therein that they had submitted their election expenditure register during the election held in 2016 and they are not able to attend the personal hearing on the above said date due to home quarantine in view of Covid-19 and they requested to another date of personal hearing. In view of their submission they were given last opportunity of personal hearing on 07.12.2020, in my office.

9. That the candidate mentioned at Sr. 1 has filed a CWP No. 20580 of 2020 in the Hon'ble Punjab and Haryana High Court at Chandigarh against the show cause and notice of personal hearing issued by the Commission. Hon'ble Punjab and Haryana High Court at Chandigarh has disposed off the said writ petition with the following order :-

“We disposed off the writ petition and give liberty to the petitioner to submit another copy of the reply to the show cause notice as well as record, if any, accompanied therewith. Needless to observe this Court hopes and trusts that State Election Commission, Haryana would not delay the matter any further and take a decision as regards the show caused notice issued to the petitioner at the earliest.”

10. In view of above order both the candidates appeared before me on 07.12.2020 and submitted their detailed reply along with a copy of diary register of Municipal Committee, Mahendergarh in which their election expenditure register has shown entered in the diary register of Municipal Committee at Sr. No. 268 and 269 both dated 10.06.2016. Reply submitted by both the candidates taken on record.

11. In view of this, it was decided that the authenticity of statements of both the candidates may be got verified from the concerned Officer/Official of the Municipal Committee, Mahendergarh. Accordingly, Deputy Commissioner was requested vide letter dated 08.12.2020 to depute an officer/official on 14.12.2020 in the Commission for verifying the facts of the statements made by the above said candidates along with relevant record. Sh. Pardeep Kumar, Secretary and concerned Clerk Sh. Khillu Ram, Municipal Committee, Mahendergarh appeared before me on 14.12.2020. Sh. Khillu Ram, Clerk has submitted in his statement that the list of 32 candidates those who had not submitted their election expenditure register within the prescribed time limit, had verified by him. He has further submitted that the diary register of the municipality for the period from 10.06.2016 to 28.11.2017 is without page marking and has not verified by the competent authority. Sh. Khillu Ram, who is election clerk, has also further submitted that he has not received the election expenditure register which are entered in the diary register of the Municipal Committee at Sr. No. 268 and 269 both dated 10.06.2016 and he do not know about the handwriting in diary register.

12. In view of doubt, diary register found without page marking and unknown handwriting in the diary register the Deputy Commissioner, Mahendergarh was requested vide letter No. SEC/3ME/2020/4185, dated 15.12.2020 to direct the diary Clerk of Municipal Committee, Mahendergarh to appear before me on 21.12.2020 along with original dak/letters entered at Sr. 264 to 273 from dated 10.06.2016 to 13.06.2016 as well as original diary register immediately before the Sr. No. 264 dated 10.06.2016. It was also requested to verify separately that the diary Clerk who has made the above said entries in the diary register was present in the municipality and was not on leave on the said dates.

13. Sh. Pardeep Kumar, Secretary and Sh. Khillu Ram, Clerk appeared before me on dated 18.12.2020 with the statement made by Sh. Mahabir Singh, Peon, Municipal Committee, Mahendergarh wherein he has stated that he is a patient of BP & Sugar and he used to get the entries in the diary register through his children. After observing the statement of Sh. Mahabir Singh, Peon, the Deputy Commissioner, Mahendergarh at Narnaul was requested to send a copy of order by which Sh. Mahabir Singh, Peon was assigned the work of diary Clerk. The Deputy Commissioner was also requested to verify the handwriting of Children of Sh. Mahabir Singh, Peon and also send handwriting of the working staff of Municipal Committee, Mahendergarh. Sh. Ravi Yadav, Clerk of Municipal Committee, Mahendergarh was appeared before me on 05.01.2021 with sealed envelope. After opening of sealed envelope, the handwriting of the children of Sh. Mahabir Singh, Peon, statements of Smt. Reena Yadav Clerk, Sh. Shiv Kumar Clerk, Sh. Rohit Kumar, JE have been found in which they have stated that letters entered at diary No. 264 to 273 (except 267) dated 10.06.2016 to 13.06.2016 had not been received in their branches.

14. In view of above, it was observed that a copy of order by which Sh. Mahabir Singh, Peon was assigned the work of diary Clerk was not provided. Hence, the Deputy Commissioner, Mahendergarh was requested to direct the existing Secretary, the Secretary posted in the municipality on 10.06.2016, Sh. Khillu Ram, Clerk, Smt. Reena Yadav, Clerk and Sh. Mahabir Singh, Peon to appear before me on 29.01.2021. In addition Deputy Commissioner was also requested to direct Sh. Surender Kumar and Smt. Reena Garg to appear before me on the said date for the personal hearing.

15. Sh. Pardeep Kumar, Secretary, Municipal Committee, Mahendergarh has stated that letter No. SEC/3ME/2021/201 dated 08.01.2021 has been delivered to Sh. Surender Kumar and Smt. Reena Garg on dated 25.01.2021.

16. Sh. Mahabir Singh, Peon submitted in his statement that he is doing the work of diary Clerk since 2008-2009, he has made entries in the diary register at Sr. No. 268 and 269 both dated 10.06.2016 through his daughter as he is a patient of BP & Sugar. He has also submitted a copy of order dated 27.06.2016 issued by the then Secretary, Municipal Committee, Mahendergarh by which he has been assigned the duties of Death-Birth Branch and Diary-Dispatch Branch. I questioned him; to whom the letters entered at Sr. No. 268 and 269 both dated 10.06.2016 were delivered, he answered to Sh. Dinesh, Clerk. On asking him, when Sh. Khillu Ram, Clerk was doing the election work, why these letters were delivered to Sh. Dinesh, Clerk; there was no answer. I have questioned the then Secretary whether it was in his knowledge that Sh. Mahabir Singh, Peon has got the diary work through his daughter; he replied that it was not in his knowledge. Further, I have also asked the then Secretary which work was allotted to Sh. Dinesh, Clerk; he replied that the Court Cases and diary work from time to time was allotted to Sh. Dinesh Kumar, Clerk. On asking to Sh. Mahabir Singh, Peon, there is neither page marking on one diary register nor it has been got verified from any officer/official; he replied that he has not seen it because he has started the work in between.

17. Smt. Reena Yadav, Clerk, submitted that she is posted in Municipal Committee, Mahendergarh from 19.06.2012 and letters entered at Sr. No. 268 and 269 of the diary register have not entered by her because she was on maternity leave at that time.

18. Sh. Surender Kumar candidate has submitted that he has submitted his reply of the Show Cause Notice on dated 07.12.2020. He was asked to appear today and he is appeared. He has also submitted that you are verifying the entries of the diary register of Municipal Committee, a copy of preliminary enquiry and statements also be made available to him so that he may submit his reply and proof of the same. On asking, you had intimated verbally on dated 07.12.2020 that entries in the diary register at Sr. No. 268 and 269 both dated 10.06.2016 were made by Smt. Reena Yadav, Clerk; Sh. Surender Kumar clearly denied his verbal statement and said that it was not said by him. Again the question was asked to Sh. Surender Kumar, whether the statements of the officials have not been recorded before him, instead of giving reply of the question he has raised query that statements of the officials have been recorded in his absence at various time, whereas statement of main person Sh. Mahabir Singh, Peon was recorded before Sh. Surender Kumar at the time of recording of his statement during the personal hearing and Sh. Mahabir Singh, Peon has also been cross-examined by Sh. Surender Kumar.

19. Smt. Reena Garg candidate did not appear in person and she has submitted a representation through email dated 29.01.2021 stating therein that in view of court liberty order in CWP No. 20580 of 2020 she had submitted a written reply of the show cause notice on dated 07.12.2020. She has also submitted that we have been asked to appear in person on dated 29.01.2021 but we have not provided a copy of preliminary enquiry report. Now, enquiry is being made regarding depositing election expenditure statement by me. After completion of the enquiry a copy of enquiry report may be provided to her so that she may review it and she may be allowed to file her reply.

20. It is specifically mentioned here that the show cause notice was issued on dated 15.03.2017 to submit reply within 15 days after issuance of show cause notice and reply of the same was submitted by them on dated 04.10.2018 i.e. after about 1 year and 7 months. Further, in view of justice a notice of personal hearing was issued to Smt. Reena Garg and Sh. Surender Kumar vide letter dated 12.11.2020 by which they were given an opportunity of hearing on

dated 20.11.2020 before me. Sh. Surender Kumar has filed a CWP No. 20580 of 2020 in the Hon'ble Punjab and Haryana High Court, Chandigarh against the show cause notice. In view of the order dated 02.01.2021 of the Hon'ble High Court both Smt. Reena Garg and Sh. Surender Kumar have filed their revised reply. After hearing Sh. Surender Kumar was informed that decision in matter would be conveyed to them.

21. In view of above position, it was decided to verify the authenticity of signature of Dinesh, Clerk and to obtain a copy of signatures/initials of Dinesh, Clerk from the official record of Municipal Council, Rewari, where the said official was remained posted after his transfer from Municipal Committee, Mahendergarh and before his death vide Commission's letter No. SEC/3ME/2021/539 dated 04th February, 2021. The Municipal Council, Rewari has sent signature of Sh. Dinesh, Clerk from the official record vide its letter No. 550/MCR dated 05.02.2021.

Observation:- Sh. Mahavir Singh, Peon was not authorized by any authority to get the diary work done from his daughter and he could not reply why the letters entered at Sr. No. 268 and 269 have been delivered to Sh. Dinesh, Clerk; whereas Sh. Khillu Ram, Clerk was doing the election related work. Sh. Mahavir Singh, Peon was asked to explain about the page marking in the diary register having Sr. No. 264 to 273 dated 10.06.2016 to 13.06.2016, he has stated that he has started diary work in between, whereas the said entries have been made on starting pages of the diary register. The Deputy Commissioner, Mahendergarh vide its letter No. 2409 date 16.12.2016, had sent a list of 32 candidates those who have not submitted their election expenditure statements, name of Smt. Reena Garg and Sh. Surender Kumar were mentioned in list at Sr. No. 9 and 29 respectively. This was a conclusive proof that Sh. Surender Kumar and Smt. Reena Garg have not deposited their election expenditure register within the prescribed time. If the expenditure register have been deposited by them on 10.06.2016 in the Municipal Committee, their names would not be included in the list of those candidates who have not filed their election expenditure register. In addition, on matching the signature/initial of Sh. Dinesh, Clerk mentioned in the diary register of the Municipal Committee, Mahendergarh with the signature duly verified by the Municipal Council, Rewari from the official record; there is lot of difference in both the signatures of Sh. Dinesh, Clerk, and seems that signature of Sh. Dinesh Kumar, Clerk has made fraudulently in the diary register of Municipal Committee, Mahendergarh by the interested persons with the motive that such signature could not be verified after the death of Sh. Dinesh, Clerk. It has also been observed that there were ten letters entered in starting page of the diary register (mentioned at Sr. No. 264 to 273 dated 10.06.2016 to 13.06.2016) on asking the said original letters only a copy of letter mentioned at Sr. No. 267 has been provided; on perusal of said letter it has been found that no diary No. has been mentioned on the said letter, for the remaining nine letters report of each branch of the said municipality has been sent according to statements, the said letters had not received in their branches. I am also of the view that entries made in diary register of Municipal Committee, Mahendergarh other than authorized official record cannot be considered as authenticated record of the Municipal Committee, and which appears that the diary register has been prepared fake and forged by the officials of the Committee under pressure of the both Smt. Reena Garg and Sh. Surender Kumar as Smt. Reena Garg was President of the Committee and Sh. Surender Kumar is her husband. She has misused her power and I considered that both Sh. Surender Kumar and Smt. Reena Garg have not submitted their election expenditure register within the prescribed time limit of 30 days after the declaration of election result of the Municipal Committee, Mahendergarh. The request of both the candidates for providing a copy of preliminary enquiry cannot be considered as on the basis of record and my observation nothing has been left in the matter which requires revised reply from the said candidates.

22. In view of above, I, Parmal Singh, Assistant State Election Commissioner, Haryana, hereby order to disqualify the above said both candidates under Section 13D of the Haryana Municipal Act, 1973 read with Section 10A of the Representation of People Act, 1951 for being chosen as, and for being a member of Municipality for a period of three years from the date of this order.

23. The office is directed to send a copy of this order to the candidate concerned through Deputy Commissioner, Mahendergarh, immediately.

Panchkula:
The 10th February, 2021.

PARMAL SINGH,
Assistant State Election Commissioner, Haryana.